



## Public Utility Commission of Texas

1701 N. Congress Avenue  
P. O. Box 13326  
Austin, Texas 78711-3326  
512 / 936-7000 • (Fax) 936-7003  
Web Site: [www.puc.state.tx.us](http://www.puc.state.tx.us)

Pat Wood, III  
Chairman

Judy Walsh  
Commissioner

Patricia A. Curran  
Commissioner

September 11, 1998

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street NW Room 222  
Washington DC 20554

Dear Secretary:

Re: CC Docket No. 98-141 - SBC Communications, Inc. and Ameritech Corporation  
Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks  
Comment on Proposed Protective Order Filed by SBC and Ameritech

Enclosed is an original and twelve copies of the Comments of the Public Utility Commission of Texas in the above referenced proceeding.

Thank you for your assistance.

Sincerely,

*Stephen J. Davis*

Stephen J. Davis  
Chief  
Office of Policy Development

Enclosure

cc: International Transcription Service  
Policy and Program Planning - Common Carrier Bureau  
International Bureau  
Jenine Poltronieri - Wireless Telecommunications Bureau  
Commercial Wireless Division  
Cecilia Stephens - Common Carrier Bureau (diskette only)

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**RECEIVED  
SEP 14 1998  
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**In the Matter of**

**SBC Communications, Inc. and Ameritech )  
Corporation Seek FCC Consent for a )  
Proposed Transfer of Control and )  
Commission Seeks Comment on Proposed )  
Protective Order Filed by SBC and )  
Ameritech )**

**CC Docket No. 98-147**

**COMMENTS OF THE  
PUBLIC UTILITY COMMISSION OF TEXAS**

**Pat Wood, III, Chairman  
Judy Walsh, Commissioner  
Patricia A. Curran, Commissioner**

**September 10, 1998**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

**SBC Communications, Inc. and Ameritech )  
Corporation Seek FCC Consent for a )  
Proposed Transfer of Control and )  
Commission Seeks Comment on Proposed )  
Protective Order Filed by SBC and )  
Ameritech )**

**CC Docket No. 98-141**

**RECEIVED  
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**COMMENTS OF THE  
PUBLIC UTILITY COMMISSION OF TEXAS**

**I. Introduction**

The Public Utility Commission of Texas (PUCT) submits these comments to the Federal Communications Commission (FCC or Commission) regarding the proposed transfer of control from Ameritech Corporation (Ameritech) to SBC Communications, Inc. (SBC). We recognize the difficult decision that the FCC must make with regard to this merger. The Commission must determine whether the proposed horizontal merger will produce benefits in the wireless, wireline, and long distance markets, and will serve the public interest.

The PUCT has a strong and continued interest in opening telecommunications markets to competition, both local markets and the long distance market, now and after the § 271 requirements of the federal Telecommunications Act, 47 U.S.C. § 271, Pub. L. No. 104. 110 Stat. 56 (1996) (FTA), are met by Southwestern Bell Telephone Company (SWBT). We believe that healthy, robust competition will benefit Texas customers. The PUCT is particularly interested in the potential effects that approval of this merger may have on Texas customers, on the

competitiveness of our local telecommunications market, and on the provision of in-region long distance service. We offer our comments based on our experience with SBC and the current status of local competition in our state. We hope the information we provide is useful to the Commission in making its final judgment about this merger.

## **II. Competition**

### **A. Proposed Benefits**

The PUCT notes SBC/Ameritech's plan to become a facilities-based competitor in the top 30 U.S. markets outside of their incumbent areas, which will benefit the competitive markets in those areas. But the PUCT offers no opinion concerning whether the size and scope envisioned by the merger are required for this plan, or whether SBC and/or Ameritech could have made facilities-based entry into these markets as stand-alone companies. We also offer no opinion whether the merger will hasten the entry of other competitors to compete vigorously in their own regions and in the new SBC in-region areas. If so, these results would offer competitive benefits. The PUCT strongly encourages the Commission to closely examine the feasibility of SBC/Ameritech's nationwide market-entry plan to ascertain the likelihood of its success.

### **B. Elimination of Potential Competitors**

In January 1997, Ameritech Communications International, Inc. (ACII), a wholly-owned subsidiary of Ameritech, filed an application for a service provider certificate of operating

authority (SPCOA) with the PUCT.<sup>1</sup> In its application, ACII indicated that its initial activities would be in counties served by Southwestern Bell Telephone Company (SWBT), that it intended initially to be a reseller of local exchange services, and that in the future it might provide facilities-based local exchange services. ACII also indicated that it would use the unbundled network elements (UNEs) of incumbent local exchange carriers (ILECs) until it would make sense to utilize its own facilities to provide portions of the network. The PUCT approved ACII's application on April 3, 1997.

SWBT has relied on Ameritech as a viable competitor to add weight to its evidence in the Texas § 271 proceeding.<sup>2</sup> While the level of market penetration that ACII could eventually achieve is unclear, Ameritech until recently had been actively involved in testing SWBT's operations support systems (OSS) and had begun passing production orders to SWBT.<sup>3</sup> Ameritech personnel attended SWBT's OSS training sessions in April 1997, and education classes on SWBT's electronic interfaces in August and October 1997.<sup>4</sup> Similarly, SWBT could have offered a competitive alternative in the Ameritech in-region states.

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<sup>1</sup> Docket No. 16965, *Application of Ameritech Communications International, Inc. for a Service Provider Certificate of Operating Authority* (Jan. 28, 1997).

<sup>2</sup> On March 2, 1998, SWBT filed with the PUCT a notice of intent to file a § 271 application for authority to provide interLATA telecommunications service in Texas. The PUCT is addressing SWBT's application through Project No. 16251.

<sup>3</sup> Project No. 16251, *Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market*, Tr. at 1577 (April 24, 1998).

<sup>4</sup> Project No. 16251, *Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market*, Affidavit of Elizabeth A. Ham at 31, 100, and 103 (Feb. 27, 1998).

C. Importance of Opening the Local Telecommunications Markets

Our concern is whether the merger could have a negative impact on local telecommunications competition in the former SBC and Ameritech in-region areas, and particularly in the State of Texas. In this horizontal merger, the new SBC will be the in-region dominant provider in 13 states, and will serve 30% of the residential and 50% of the business customers in the continental United States. While SBC's entry into out-of-region markets is a benefit, it is nevertheless critical that all of the in-region markets served by SBC be completely and irreversibly open to competitive entry. It is generally recognized that customers value a single source for all telecommunications services, and until the local markets are open, competitive providers cannot compete as single source providers.

The status of local market competition is reflected in the § 271 applications of both Ameritech and SBC. After Ameritech filed for interLATA entry in Michigan, the FCC determined that the statutory criteria for opening the local markets had not been met. Similarly, the FCC denied SWBT's § 271 application for Oklahoma; this denial was affirmed by the D.C. Circuit. In addition, SBC challenged the constitutionality of the § 271 requirements in the Federal District Court for the Northern District of Texas. The District Court's ruling in SBC's favor has been overturned by the Fifth Circuit Court of Appeals. This history reflects substantial difference of opinion between SBC/Ameritech and other parties concerning the requirements for opening the local market to competition.

D. The Bell Atlantic/NYNEX Model and SWBT's § 271 Application in Texas

We believe that the FCC's Bell Atlantic/NYNEX merger order provides a good template for the evaluation of the SBC/Ameritech application.<sup>5</sup> If the Commission finds the merger in the public interest, it should condition approval in a manner similar to that outlined in Appendix C and D of the Bell Atlantic/NYNEX Order. In that light, the PUCT offers information regarding SWBT's § 271 proceeding in Texas.

On May 21, 1998, the PUCT determined that it could not yet support SWBT's entry into Texas' interLATA market. The PUCT directed its staff to establish a collaborative process to address all outstanding issues preventing SWBT from obtaining an affirmative recommendation from the PUCT regarding its § 271 application. Attachment A contains a copy of the PUCT's Order No. 25, Adopting Staff Recommendations, Directing Staff to Establish Collaborative Process. The PUCT staff, SWBT, and many interested parties are in the midst of the collaborative process designed to address all issues that must be resolved to irreversibly open SWBT's local market to competition. The collaborative process will address important competitive issues with SWBT involving interconnecting, purchasing unbundled network elements (UNEs), providing resale services, and resolving communication problems between SWBT and would-be competitors and within SWBT itself.

The collaborative process is resulting in progress on the issues, and SWBT is cooperating in the effort to find solutions. But the actual level of competition in Texas is still *de minimis*, and consensus has not been reached on the very critical issues of satisfactory OSS systems, willingness to rebundle UNEs, collocation, and performance measures. Until the collaborative

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<sup>5</sup> *In the Applications of NYNEX Corporation Transferor and Bell Atlantic Corporation Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, CC 97-286, (rel. Aug. 14, 1997)(Bell Atlantic/NYNEX Order).

process is satisfactorily completed and competitive safeguards are in place there is potential for a company the size of SBC/Ameritech to wield sufficient market power to stifle competition in local markets. If the Commission finds this merger to be in the public interest, we urge that such finding be contingent on the satisfactory completion of the collaborative process and SWBT's satisfaction of the 14 point checklist for entry into the interLATA market.

### **III. Customers Must Reap the Benefits**

In its application, SBC/Ameritech indicated that large business customers shall benefit from the new entity's nationwide and global network. Our overarching concern regarding this potential merger is that customers, especially rural, residential, and small business customers, should also benefit from its effects. We are pleased that SBC/Ameritech intends to deploy high-speed data networks and services as part of its national-local strategy. Our expectation is that while it pursues its stated strategy of targeting the top 50 markets in the country, SBC/Ameritech will continue its high quality of service in the areas it presently serves.

Because larger business markets will be the primary focus of SBC/Ameritech's "out-of-region" strategy and, it is likely, of competitors' "in-region" response, it is important to take steps in this proceeding to facilitate "in-region" market entry by companies wishing to serve residential and smaller business markets. Although this issue is currently a centerpiece of SWBT's § 271 proceeding in Texas, it is appropriate to also condition this merger on successful resolution of such issues as unbundled network element recombination procedures and charges, cost-effective central office collocation options, and other workable solutions that promote competition for smaller customers.



The Bell Atlantic/ NYNEX and SBC/Pacific Telesis mergers have received mixed reports regarding the level of customer service and rate increases since they took place. While these reports are inconclusive, they highlight the possibility that both negative and positive effects can result from these mergers.<sup>6</sup> However, SBC states that its merger with Pacific Telesis did not result in higher local service rates in California and actually resulted in better customer service and higher customer satisfaction ratings.<sup>7</sup> In its years of regulating SWBT, the PUCT has observed a high quality of customer service. If the merger is approved, we expect this high quality to be maintained in SBC's Texas market.

#### **IV. Conclusion**

This merger is characterized as the third largest merger ever, representing control of approximately 30% of the residential lines and 50% of the business lines in the continental United States. We encourage the Commission to fully review the potential competitive and economic benefits which can only be realized if the merger takes place (on which the PUCT takes no position), and to balance those benefits with the potential for negative impacts on the competitive market and customers if the local markets are not fully opened to competition. The PUCT urges the Commission and other regulators to ensure that small commercial and residential customers do not get overlooked in the enthusiasm to invade lucrative markets. The

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<sup>6</sup> See Stephanie N. Mehta, "Consumers Get Put on Hold in Phone Deals", *Wall Street Journal* (June 11, 1998); Anita Raghaven, Steven Lipin, and John J. Keller, "SBC Communications to Acquire Ameritech in a \$55 Billion Deal", *Wall Street Journal* (June 11, 1998); Cliff Edwards, "Opponents of SBC Expansion Say that Phone Service is Headed to Monopoly", *Austin American Statesman*, (June 12, 1998); and Peter Elstrom and Catherine Yang, "Big Mergers, Bad Service - Phone Customers Don't Seem to Gain Much from Consolidation", *Business Week* (Aug. 10, 1998).

<sup>7</sup> *Merger of SBC Communications Inc. and Ameritech Corporation Description of the Transaction, Public Interest Showing and Related Demonstrations* at 42 and Footnote Nos. 49 and 50 (July 24, 1998).

PUCT has made significant progress toward permanently opening the Texas markets to local competition in SWBT's in-region territory. But there are significant critical issues that must be resolved before the conditions will exist for irreversible competition. We hope that the Commission considers the progress made to date as well as the critical issues that remain to be addressed in determining the outcome of SBC/Ameritech's application.

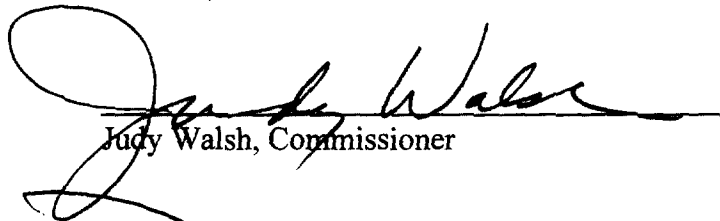
Respectfully submitted,

Public Utility Commission of Texas  
1701 N. Congress Ave.  
P.O. Box 13326  
Austin, Texas 78711-3326

September 10, 1998



Pat Wood, III, Chairman



Judy Walsh, Commissioner



Patricia A. Curran, Commissioner

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## **ATTACHMENT A**

**PUC PROJECT NO. 16251**

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**INVESTIGATION OF  
SOUTHWESTERN BELL TELEPHONE  
COMPANY'S ENTRY INTO THE  
TEXAS INTERLATA  
TELECOMMUNICATIONS MARKET**

**§ PUBLIC UTILITY COMMISSION  
§  
§ OF TEXAS  
§  
§**

**ORDER NO. 25  
ADOPTING STAFF RECOMMENDATIONS;  
DIRECTING STAFF TO ESTABLISH COLLABORATIVE PROCESS**

*Comments and Recommendations*

At the May 21, 1998 open meeting, the Commission discussed staff's recommendations on Southwestern Bell Telephone Company's (SWBT's) notice of intent to file section 271 application for interLATA authority in Texas. The Commission adopted, as modified, staff's recommendations. Attachment 1 contains the recommendations adopted by the Commission.

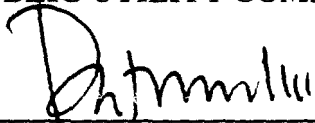
*Collaborative Process*

Also at the May 21, 1998 open meeting, the Commission directed the staff to establish a collaborative process to address all the issues outlined by Commissioners and staff, as contained in the attached recommendation. The goal of the collaborative process shall be to institute workable solutions to the issues outlined by Commissioners and staff, including a series of specific commitments and obligations by SWBT, and to review data obtained during the process. At the conclusion of the collaborative process, SWBT shall supplement the record to show its compliance with the requirements of section 271. The successful conclusion of the collaborative process and supplementation of the record would allow the Commission to reach a positive recommendation to the FCC on SWBT's application.

A subsequent order shall detail the specific procedures and schedule for the collaborative process.

SIGNED AT AUSTIN, TEXAS the 1st day of June 1998.

PUBLIC UTILITY COMMISSION OF TEXAS

  
PAT WOOD, III, CHAIRMAN

  
JUDY WALSH, COMMISSIONER

  
PATRICIA A. CURRAN, COMMISSIONER

**PUC PROJECT NO. 16251**

<b>INVESTIGATION OF</b>	<b>§</b>	
<b>SOUTHWESTERN BELL TELEPHONE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COMPANY'S ENTRY INTO THE</b>	<b>§</b>	
<b>TEXAS INTERLATA</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TELECOMMUNICATIONS MARKET</b>	<b>§</b>	

**COMMISSION RECOMMENDATION**

The Texas Public Utility Commission (the Commission) and the telecommunications industry have worked steadily since the passage of the federal Telecommunications Act of 1996<sup>1</sup> (FTA96) to negotiate and arbitrate interconnection agreements that will facilitate local competition in Texas. Pursuant to FTA96, new entrants have the legal authority to enter the local market in Texas through resale, unbundled network elements (UNEs), and interconnection. FTA96 § 251 (47 U.S.C. § 251).

In order to provide in-region interLATA services, Southwestern Bell Telephone Company (SWBT), a Bell Operating Company (BOC), must establish that the local telecommunications market is irreversibly open to competition.<sup>2</sup> Specifically, Section 271 of FTA96 requires SWBT to establish that

- it satisfies the requirements of either Section 271(c)(1)(A), known as "Track A," or Section 271(c)(1)(B), known as "Track B";
- it is providing the 14 checklist items listed in Section 271(c)(2)(B) pursuant to either a Track A state-approved interconnection agreement or a Track B statement of generally available terms (SGAT);
- the requested authorization will be carried out in accordance with the requirements of Section 272; and
- SWBT's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity." Section 271(d)(3)(C).

Although the Federal Communications Commission (FCC) ultimately determines whether SWBT has established its entitlement to enter the interLATA market pursuant to Section 271, the statute directs the FCC to consult with state commissions. The FCC relies upon state commissions to develop a complete factual record.<sup>3</sup>

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA96).

<sup>2</sup> See e.g., Memorandum Opinion and Order, Docket No. 97-137, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-region, InterLATA Services in Michigan (August 19, 1997) (Ameritech Michigan Order).

<sup>3</sup> Ameritech Michigan Order at ¶ 30.

SWBT filed its application to provide in-region interLATA service in Texas on March 2, 1998 with the Commission. On April 7, 1998, the Commission held an open meeting at SWBT's Local Service Center (LSC) in the Dallas-Ft. Worth area and on April 21st through the 25th, the Commission held an extensive hearing on SWBT's application. Many competitive local exchange companies (CLECs) and other parties participated in the Commission's 271 proceeding.

SWBT has done much in Texas to open the local market to competition. Notwithstanding that fact, if the Commission were asked to give a recommendation to the FCC today, it regrettably would be required on the record before it to say "not yet." The Commission files this Recommendation in an effort to provide SWBT with guidance on what the Commission believes SWBT will need to do in order for this Commission to say that the local market is irreversibly open and SWBT should be allowed to provide in-region interLATA service. The Commission files this Recommendation in the spirit of cooperation and in the hope that SWBT will work with the 271 participants and this Commission to get SWBT to "yes."

Participants presented evidence throughout this Section 271 proceeding that indicated their difficulty in working with SWBT to interconnect, purchase UNEs, and provide resale. Although the Commission believes the evidence may indicate that SWBT needs to change its corporate attitude and view the participants as wholesale customers, the Commission also believes many of the problems may be attributable to lack of communication within SWBT and between SWBT and the participants. The Commission believes that SWBT attempted to address many of the problems raised by the participants during the course of the 271 hearing itself. The Commission hopes that this response by SWBT indicates a willingness to address the issues that will get SWBT to "yes."

### **Public Interest**

With regard to the public interest aspect of Section 271 (including the "ease of doing business with SWBT") the Commission makes the following recommendations:

1. The Commission shall establish a collaborative process whereby SWBT, Commission staff, and participants to this project establish a working system that addresses all of the issues raised in this recommendation;
2. SWBT needs to show this Commission and participants during the collaborative process by its actions that its corporate attitude has changed and that it has begun to treat CLECs like its customers;
3. SWBT needs to establish better communication between its upper management, including its policy group, and its account representatives. As a first step, SWBT shall develop policy manuals for its account representatives and put in place a system, such as email notifications, to communicate decisions by the policy group to account representatives and questions or comments back to the policy group;

4. SWBT needs to establish consistent policies used by all SWBT employees in responding to issues raised by CLECs. Toward that end, SWBT shall establish an interdepartmental group whose responsibility is trouble-shooting for CLECs engaged in interconnection, purchase of UNEs, and resale. This group shall be headed by an executive of SWBT with the final decision making power;
5. SWBT needs to establish a system for providing financial or other incentives to LSC personnel based upon CLEC satisfaction;
6. SWBT needs to commit to resolving problem issues with CLECs in a manner that will give CLECs a meaningful opportunity to compete;
7. SWBT shall draft a comprehensive manual for CLECs to ensure the timely provision of all aspects of interconnection, provision of UNEs and resale. The manual shall be written in a fashion that clearly delineates parties' responsibilities, the procedures for obtaining technical and other practical information, and the timelines for accomplishing the various steps in interconnection, purchase of UNEs and resale. The manual should also set forth SWBT's policy with regard to a CLEC's ability to adopt an approved interconnection agreement pursuant to Section 252(i) (this process will be referred to as the "MFN" process);
8. SWBT needs to treat CLECs at parity with the way it treats itself or its unregulated affiliates;
9. SWBT needs to show proof that it has made all the changes it agreed to make during the process of the Commission's 271 hearing, all of which have been detailed in the record;
10. SWBT needs to establish that its interconnection agreements are binding and are available on a nondiscriminatory basis to all CLECs;
11. To the extent SWBT chooses to establish 271 requirements by relying upon interconnection agreements it has appealed, SWBT should consider adopting a statement of generally available terms and conditions;
12. SWBT needs to establish that it is following all Commission orders referenced in this recommendation and that it intends to follow future directives of the Commission;
13. SWBT needs to establish its commitment to offering the terms of current interconnection agreements during any period of renegotiation, even if the negotiations extend beyond the original term of the interconnection agreements;
14. Commission staff, SWBT, and the participants need to establish adequate performance monitoring (including performance standards, reporting requirements, and enforcement mechanisms) during the collaborative process that will allow self-policing of the interconnection agreements after SWBT has been allowed to enter the long distance market;
15. SWBT shall not use customer proprietary network information to "winback" customers lost to competitors.



## Checklist Items

**ITEM ONE:** Has SWBT provided interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1), pursuant to 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall investigate and implement measures to expedite construction and installation activities both at tandem and end office locations and, in order to provide for a reasonably foreseeable demand, SWBT shall engage in cooperative planning of trunking facilities with a view toward providing parity for CLECs;
2. The physical collocation tariff should be amended to be made available to any CLEC that wants to physically collocate in SWBT's facilities. A CLEC should be allowed to use the tariff without going through the MFN process in Section 252(i) of FTA96;
3. SWBT shall implement a cost-based virtual collocation tariff available to all CLECs;
4. SWBT shall allow CLECs to buy equipment from non-SWBT entities, and in turn, sell the equipment to SWBT in order to reduce the CLECs' costs.

**ITEM TWO:** Has SWBT provided nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1) of FTA, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall offer at least the following three methods to allow CLECs to recombine UNEs. These three methods attempt to balance SWBT's security concerns with the desire of CLECs to combine UNEs:
  - virtual collocation of cross-connects at cost-based rates,
  - access to recent change capability of the switch to combine loop port combinations, and
  - electronic access such as Digital Cross Connect (DCS) for combining loop and port at cost based rates, where available;

2. SWBT, Commission Staff, and the participants to this proceeding shall explore the following issues during the collaborative process:
  - additional methods for recombining UNEs or for allowing CLECs to combine UNEs and the costs associated with such methods;
  - whether SWBT is providing any and all individual UNEs required by FTA96;
3. Concerning virtual collocation of cross connects, the Commission recommends that CLECs be able to provide incumbent local exchange companies (ILECs) with rolls of their own wire. When a customer changes carriers from the ILEC to a CLEC, the ILEC would take out a wire from the CLEC's inventory, untie and remove the ILEC's wire, and insert and tie the CLEC's wire. Similarly, if a customer returns to the ILEC, the ILEC must remove the CLECs wire, insert its wire, and return the CLEC's wire to the CLEC's inventory. SWBT, under this scenario, would be able to recover its forward-looking, economic costs and insure the security of the network;
4. Concerns have been raised about the Commission requiring CLECs to obtain right to use licenses, where necessary, when leasing UNEs.<sup>4</sup> Under the current UNE rates, the Commission believes the right to use decision made in the mega-arbitration<sup>5</sup> is appropriate. However, the Commission invites CLECs to seek a UNE-Right to Use adder. This adder would compensate SWBT for costs associated with right to use arrangements. For CLECs choosing to pay the cost-based adder, SWBT would agree to provide the right to use arrangements as a wholesale function. For CLECs choosing not to pay the adder, the Commission's position in the mega-arbitration would apply. The parameters of this issue shall be negotiated in the collaborative process.

**ITEM THREE:** Has SWBT provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by SWBT at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934 as amended by the FTA96 pursuant to 271(c)(2)(B)(iii), and applicable rules promulgated by the FCC?

**RECOMMENDATION:** If SWBT implements the Commission's recommendations in the **public interest** section above, and the **OSS** and **performance standard** sections addressed below, the Commission believes SWBT will meet this checklist item.

**ITEM FOUR:** Does the access and interconnection provided by SWBT include local loop transmission from the central office to the customer's premises, unbundled from local switching or other services in accordance with the requirements of section 271(c)(2)(B)(iv) of FTA96 and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, Staff

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<sup>4</sup> The issue of the rights of third party vendors is currently pending before the FCC.

<sup>5</sup> "Mega-arbitration" is the term used to refer to several arbitration dockets, specifically Nos. 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, and 17781, all of which were consolidated into one docket.

recommends the following, the details of which could be established in the collaborative process. Staff believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall publish a technical manual showing CLECs how to use the unbundled loops to provide Asymmetric Digital Subscriber Line (ADSL) and High-Speed Digital Subscriber Line (HDSL) services. Spectrum management of available cable space shall be conducted by SWBT in an expedited manner, upon request from a CLEC who intends to use the unbundled loop for high speed ADSL and/or HDSL services;
2. SWBT shall also allow 4-wire HDSL service on an unbundled loop, provided the subscriber to such service has adequate cable or channel capacity or other means to place 911 calls from the same location;
3. SWBT must demonstrate it is complying with its development/reporting obligations for digital subscriber loops and that CLECs using recombined UNEs will have access to mechanized line testing (MLT) at parity with SWBT before the Commission can recommend that SWBT be found to have met this checklist item. Moreover, to the extent SWBT provides virtual collocation of the cross-connect and/or disconnection by recent change order, the MLT issue may be resolved.

**ITEM FIVE:** Does the access and interconnection provided by SWBT include local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services in accordance with the requirements of section 271(c)(2)(B)(v) of FTA96 and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall be required to provide the multiplexar and the unbundled dedicated transport (UDT) as a UNE;
2. SWBT shall be required to demonstrate that it is complying with the order in Docket No. 18117 and that it is providing two-way trunks upon request to CLECs. Although the Commission concurs with SWBT that the mere existence of a past dispute that has been resolved by the Commission does not disqualify SWBT from satisfying a check list requirement, it is necessary for SWBT to demonstrate that it is, in fact, complying with the Commission's orders.

**ITEM SIX:** Does the access and interconnection provided by SWBT include local switching unbundled from transport, local loop transmission, or other services in accordance with the requirements of section 271(c)(2)(B)(vi) of FTA96 and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall be required to expedite the design process to implement measurement capability in its switching and billing systems for terminating access/originating 800 usage data for the unbundled switch or provide sufficient evidence to demonstrate why expediting this development is not feasible. The Commission further recommends that this issue, including interim compensation solutions, be explored in more detail during the collaborative process among SWBT, the participants, and Commission staff;
2. As an alternative recommendation, in the event SWBT is allowed to provide in-region interLATA service before providing a technical solution to this problem, the Commission could recommend to the FCC that SWBT interLATA relief be limited to originating, non-800 type interLATA service until SWBT has demonstrated that it provides CLECs usage data for these type of calls;
3. If a party wishes to obtain customized routing by using line-class codes, SWBT shall be required to provide such option. The appropriate rates for such service shall be based on forward looking costs. To the extent that no CLEC is interested in obtaining customized routing by using line-class codes at cost-based rates, SWBT may still be considered as "providing" such customized routing in compliance with this checklist item.

**ITEM SEVEN:** Has SWBT provided nondiscriminatory access to the following, pursuant to section 271(c)(2)(vii) and applicable rules promulgated by the FCC: (a) 911 and E911 services; (b) directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers; and, (c) operator call completion services?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall provide a compare file to each CLEC so the CLEC can verify the accuracy of 911 database information it has submitted with the actual entry by SWBT. Additionally, SWBT shall include a parity performance measure that would indicate the number of records that were entered incorrectly for its own customers, each CLEC's customers, and all CLEC

customers. SWBT shall file these reports for a minimum of three months with the parties and the Commission staff to determine if parity performance violations have occurred. Until such determination is made SWBT has not met the burden of proof that it is indeed providing parity performance;

2. Pursuant to the Mega-Arbs, SWBT shall not remove customer data from the directory assistance (LIDB) database when a new customer is served through UNEs;
3. SWBT shall collaborate with the CLECs and Commission staff to create a procedure to establish non-discriminatory procedures for customers that have been won back;
4. In addition, SWBT has denied access to ILEC directory assistance listings claiming that the ILECs have not given SWBT permission to release their customer's information. At the hearing, SWBT stated that these listings would be released as soon as that permission was received. Tr. at 1055. SWBT and the participants shall coordinate their efforts to acquire the ILECs' permission through the use of a standard release.

**ITEM EIGHT:** Has SWBT provided white pages directory listings of customers of other telecommunications carrier's telephone exchange service, pursuant to section 271(c)(2)(B)(viii) of FTA96 and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall be required to provide CLEC resellers with the opportunity to review and correct white pages directory listings prior to the date white pages directory listings are published in telephone directories to sustain its burden of proof with regards to the nondiscriminatory access standard between and among carriers;
2. SWBT shall allow CLECs to choose whether their white page listings are interspersed with SWBT listings or whether they are separate from SWBT's listings;
3. SWBT shall allow CLEC resellers the same options as facilities-based CLECs for distribution of white page telephone directories;
4. SWBT shall institute a procedure to permit CLECs to adhere advertisements to the white pages directory.

**ITEM NINE:** Has SWBT provided nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to section 271(c)(2)(B)(ix) of FTA96 and applicable rules promulgated by the FCC?

**RECOMMENDATION:** The Commission concludes that SWBT has satisfied the requirements of this checklist item with no further action.

**ITEM TEN:** Has SWBT provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to section 271(c)(2)(B)(x) of FTA96 and applicable rules promulgated by the FCC?

**RECOMMENDATION:** The Commission concludes that SWBT has satisfied the requirements of this checklist item with no further action.

**ITEM ELEVEN:** Has SWBT provided number portability, pursuant to section 271(c)(2)(B)(xi) of FTA96 and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall take corrective measures to minimize the manual intervention of its mechanized process in the provision of interim number portability (INP). SWBT shall provide at least three months of data beginning May 15, 1998, to this Commission and to the participants to ensure that CLEC customers do not lose service during the INP process;
2. The Commission has concerns relating to SWBT's delayed implementation of permanent number portability (PNP) as well. Delays in the implementation of PNP place competitors at a disadvantage, because interim solutions do not provide parity; staff, therefore, recommends that some measure be taken to address the potential for further delays in PNP implementation and the consequent detrimental effect on competition and that this issue be explored in more detail in the collaborative process;
3. SWBT shall set forth its policy on route indexing and other forms of INP, including the terms and conditions upon which it is offered;
4. SWBT shall demonstrate that it has an approved tariff providing for PNP.

**ITEM TWELVE:** Has SWBT provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of FTA96, pursuant to section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. In areas where SWBT offers optional two-way extended area service (EAS) arrangements, CLECs should have the opportunity to negotiate the interconnection rates, terms, and conditions for similar two-way arrangements with SWBT. SWBT shall be required to complete calls placed by its customers to a CLEC's two-way EAS customers as local calls provided SWBT and the CLEC have negotiated appropriate compensation for such traffic;
2. In SWBT's intraLATA dialing parity docket, Commission staff had requested that SWBT be required to file "written procedures regarding carrier-neutral, administrative and other processes it will use to implement customer selection of another intraLATA toll carrier and to provide intraLATA toll dialing parity." At this time, however, SWBT has not yet provided the Commission with any guidelines or scripts SWBT plans to use for intraLATA PIC (primary interexchange carrier) selection. SWBT has merely stated that it plans to use the same processes that have been in place for interLATA PICs, and that it has no additional details of its carrier selection process for intraLATA PIC. This issue needs to be resolved before SWBT can satisfy this checklist item.

**ITEM THIRTEEN:** Has SWBT provided reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of FTA96 pursuant to section 271(c)(2)(B)(xiii), and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall be required to abide by the Commission's ruling on compensation for internet service provider (ISP) traffic in Docket No. 18082 with respect to other CLECs. ISP traffic shall be classified as local traffic and compensated at the local interconnection rates contained in the specific SWBT-CLEC agreement, unless the agreement specifically classifies ISP traffic as non-local traffic. SWBT's obligation to pay reciprocal compensation should not be conditioned on any terms, nor should the CLECs be required to seek arbitration to receive such compensation;
2. Appropriate traffic records shall be exchanged between SWBT and CLECs to facilitate the payment of mutual compensation for calls;
3. Compensation for expanded local calling service (ELCS) traffic shall be consistent with the Commission's decision in the mega-arbitration. EAS traffic, including ELCS traffic, shall be subject to the lesser of the cost-based interconnection rates or the interconnection rates in effect between SWBT and other incumbent LECs for such traffic.

**ITEM FOURTEEN:** Has SWBT provided telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of FTA96, pursuant to 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** section, and the **OSS** and **performance standard** sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall develop procedures to assure that the provision of voice mail and other unregulated services provided by a SWBT affiliate will continue uninterrupted during the transition from one local telephone provider to another. This process will necessitate coordination with SWBT's voice mail subsidiary to assure that voice mail is not disconnected, unless a CLEC or customer requests disconnection of the voice mail service. Should the voice mail subsidiary find this process unreasonable, the subsidiary can always verify with the customer or CLEC the need to continue the provision of voice mail, without undue harm to the subsidiary;
2. SWBT shall revise its procedures to ensure that all promotions of its telecommunications services are done only after adequate notification has been provided to CLECs. Adequate notification includes the provision of notice, at least thirty days in advance of the proposed implementation date for any promotion. Additionally, SWBT shall communicate with all its CLEC customers to obtain information indicating which department or principal should receive promotional material. This would ensure the timely receipt of information provided by SWBT to the department that is required to act on behalf of the CLEC for such promotions. Finally, SWBT shall provide promotional material to all CLECs in a consistent matter, regardless of whether they are purchasing resold services as a result of an interconnection agreement or tariff;
3. The Commission agrees that most of the rulings related to customer specific contracts must be decided during the docketed proceeding. However, the FCC determined in its decision in BellSouth/South Carolina, that an RBOC must provide customer specific contracts for resale at a wholesale discount in order to meet this checklist item. To the extent SWBT wants to provide proof that it is meeting this checklist item, SWBT shall change its policy to reflect compliance with the FCC's decision;
4. At the hearing, SWBT indicated it would provide a discount on ALL promotions, regardless of duration, e.g., 30-day promotions. SWBT shall provide documentation of such.



## Performance Measures

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the **public interest** and **checklist item** sections, and the **OSS** sections addressed below, the Commission recommends the following measures and requirements as a beginning point, the details of which could be established in the collaborative process.

1. The Commission recommends that the concept of broad, outcome-based performance measures be explored for interconnection, UNEs, and resale;
2. The Commission shall consider the appropriateness of monetary penalties, including discounts to rates, as a sanction for nonperformance to the extent SWBT misses due dates in the future. The monetary penalties shall be set a level sufficient to discipline non-compliance and to insure self-enforcement;
3. SWBT shall establish that it has a consistent policy and time deadlines in responding to CLEC inquiries, as well as trouble and repair reports, and should design performance monitoring to measure its responsiveness to CLECs;
4. The Commission concurs with SWBT that the required measurement for E911 is the length of time required to clear an error; however, the definition and details of the measure should be established during the collaborative process;
5. SWBT shall provide measurements with regard to the timeliness of E911 database updates to establish that the 911 service provided to the CLECs is equivalent to that which SWBT provides to itself;
6. Benchmarks shall be established and reports made on performance measurement for a period of three months that demonstrate the timeliness of the E911 database updates for the CLECs and for SWBT. Specifically, a measurement shall be developed quantifying the amount of time that elapses between the time a CLEC's customer records are received by SWBT until the time these records have been accepted or rejected from the E911 database. A corresponding analogous measurement showing the timeliness of SWBT's own updates shall be reported for the same three month period;
7. SWBT shall initiate a policy to conduct traffic studies by obtaining busy hour data to know how a trunk group is performing and to know whether that trunk group needs augmenting. As a part of the traffic study, SWBT shall obtain peg overflow and usage counts, to determine the amount of lost traffic into a CLEC's switch from both tandems and end offices. These studies shall be made available to all interconnecting CLECs;
8. SWBT shall provide at least three months of data on all performance measures;
9. SWBT shall establish an Internet site where it will post all of its historical performance measurement reports for non-restricted use by interested parties on a monthly basis;
10. The Commission generally agrees with the supplementation as recommended by the Department of Justice (DOJ). SWBT shall provide those additional performance measures to CLECs, as well as additional measures established by the Commission, FCC, or the DOJ.